

WHITNEY POWER
MICHELE POWER
POWER & POWER LAW, LLC
10950 O'MALLEY CENTRE DR., STE C
ANCHORAGE, ALASKA 99515
Telephone: 907-222-9990
Facsimile: 800-840-0980
admin@akpowerlaw.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CHRISTINA GARCIA,

Plaintiff,

vs.

VITUS ENERGY, LLC,

Defendant.

Case No. _____ Civ (____)

COMPLAINT FOR DAMAGES

Plaintiff, Christina Garcia, by and through counsel Power & Power Law, LLC, for her complaint against Defendant, alleges as follows:

Parties and Jurisdiction

1. This action is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States, and jurisdiction arises under 28 U.S.C. §

1332(a)(1).

2. At the time of the conduct that forms the basis for Plaintiff's Complaint, Christina Garcia, was a resident of Empire, California. Ms. Garcia remains a resident of California.
3. Defendant Vitus Energy, LLC, ("Vitus") is incorporated under the laws of Alaska, and at all times relevant to this action provided services to western Alaska. Its corporation headquarters is located in Anchorage, Alaska.

Common Factual Allegations

4. On or about October 19, 2018, Kevin Dewitt was employed by Vitus on one of its tugboats, which operated on the navigable waters near Snag Point where the Wood River flows into the Nushagak River, just outside of Dillingham, Alaska.
5. On that date, Kevin Dewitt left the tugboat and went into Dillingham. At some point, he consumed alcohol. He realized that he left his wallet on the tugboat and traveled back to the tugboat via a Vitus skiff to retrieve it.
6. The Vitus skiff lacked seating and was improperly maintained and equipped for the use and dangers involved in boating on the Nushagak and the Wood rivers.
7. Mr. Dewitt invited Plaintiff Christian Garcia to accompany him as he travelled via the Vitus skiff to retrieve his wallet from the tugboat.

8. Because the skiff was not equipped with seating, there was no place for Ms. Garcia to safely sit. She braced herself against a cabinet/console in the skiff as they travelled to the Vitus tugboat to retrieve Mr. Dewitt's wallet.
9. After retrieving the wallet, Mr. Dewitt piloted the skiff toward Dillingham but did so negligently, in such way as to cause the skiff to hit a sand bar.
10. When the skiff hit the sand bar, it did so with such great force that Ms. Garcia's body was thrown forward and she was seriously injured.
11. Ms. Garcia suffered damages, both past and future, including but not limited to physical and psychological injuries, lost earnings, medical expenses, pain and suffering, inconvenience, and loss of enjoyment of life.

Claims For Relief:

Count I

Negligence Per Se

12. Plaintiff incorporates by reference all prior allegations herein.
13. On or about October 19, 2018, Defendant's employee, Kevin Dewitt, was *negligent per se*, when he operated Defendant's skiff while under the influence of an alcoholic beverage, in violation of AS 28.35.030.
35. Kevin Dewitt's *negligence per se* was the legal cause of the collision with the sand bar, resulting in damage to plaintiff, both past and future, including but not limited to physical and psychological injuries, lost

earnings, medical expenses, pain and suffering, inconvenience and loss of enjoyment of life, in an amount to be proven at trial, but in any event in excess of \$75,000.

Count II
Negligence

14. Plaintiff incorporates by reference all prior allegations herein.
15. Defendant's employee, Kevin Dewitt, owed a duty to Plaintiff to operate the Vitus skiff in a safe manner.
16. Mr. Dewitt breached this duty by operating the skiff in an unsafe manner.
17. As a result of this breach, Kevin Dewitt negligently operated Vitus's skiff in such way as to cause the skiff to hit a sand bar, seriously injuring Plaintiff.
18. As a direct result of the Kevin Dewitt's conduct, Plaintiff suffered damages, both past and future, including but not limited to physical and psychological injuries, lost earnings, medical expenses, pain and suffering, inconvenience and loss of enjoyment of life, in an amount to be proven at trial, but in any event in excess of \$75,000.

Count III
Negligent Entrustment

36. Plaintiff incorporates by reference all prior allegations herein.
37. Defendant Vitus has a duty to act reasonably in providing and/or

entrusting its property, including its skiffs, to third persons.

38. Defendant Vitus violated this duty when it permitted Mr. Dewitt use of the skiff when it knew or should have known that Mr. Dewitt intended or was likely to use the skiff in a manner that created an unreasonable risk of harm to others.
39. As a direct result of the Defendant's conduct Plaintiff suffered damages, both past and future, including but not limited to physical and psychological injuries, lost earnings, medical expenses, pain and suffering, inconvenience and loss of enjoyment of life, in an amount to be proven at trial, but in any event in excess of \$75,000.

Count IV
Negligent Hiring, Training and Supervision

40. Plaintiff incorporates by reference all prior allegations herein.
41. Defendant Vitus had a duty to act reasonably in the hiring, training and supervision of its employees.
42. Defendant Vitus breached its duty by failing to exercise due care in the hiring, training and supervision its employees, including Kevin Dewitt.
43. As a result of Defendant's breach of duty to properly hire, train, and supervise Kevin Dewitt and other personnel, Plaintiff suffered damages, both past and future, including but not limited to physical and psychological injuries, lost earnings, medical expenses, pain and suffering, inconvenience and loss of enjoyment of life, in an amount to be

proven at trial, but in any event in excess of \$75,000.

Count V
Vicarious Liability

- 44. Plaintiff incorporates by reference all prior allegations herein.
- 45. The actions of Kevin Dewitt in transporting Plaintiff occurred during the course of his employment with Defendant Vitus.
- 46. Kevin Dewitt was aided in the commission of acts injurious to Plaintiff by his agency relationship with Vitus.
- 47. Defendant Vitus's vicarious liability stems from theories of respondeat superior, aided-in-agency and non-delegable duty.
- 48. Defendant Vitus is vicariously liable for the actions of its employee, Kevin Dewitt, and all injuries and damages caused thereby or resulting therefrom. As a result, Defendant Vitus is liable for all Plaintiff's damages both past and future, including but not limited to physical and psychological injuries, lost earnings, medical expenses, pain and suffering, inconvenience and loss of enjoyment of life, in an amount to be proven at trial, but in any event in excess of \$75,000.

Count VI
Punitive Damages

- 49. Plaintiff incorporates by reference all prior allegations herein.
- 50. The actions of Defendant were outrageous or evidenced reckless

indifference to the interests of Plaintiff.

51. Under A.S. 09.17.020, Plaintiff is entitled to an award of punitive damages against Defendant, in an amount to be proven at trial.

WHEREFORE, Plaintiff requests the following relief:

1. For compensatory damages in an amount to be determined at trial, but in any event greater than \$75,000;
2. For an award of punitive damages;
3. For costs, interest and attorney's fees incurred in bringing this action; and
4. Such other relief as this Court may deem necessary and proper.

RESPECTFULLY SUBMITTED this 5th day of October 2020, at
Anchorage, Alaska.

POWER & POWER LAW, LLC
Attorneys for Plaintiff

By: /s/ Whitney Power
WHITNEY POWER
ABA No.: 1005010